

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

March 10, 2006

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Hawaii

Consent to Assign General Lease No. S-5670, Tropical Ponds Hawaii, LLC,
Assignor, to Big Island Farmers Market, LLC, Assignee, Hualua, North Kohala,
Hawaii, Tax Map Key: 3rd/5-5-07:05.

APPLICANT:

Tropical Ponds Hawaii, LLC, as Assignor, to Big Island Farmers Market, LLC, a Hawaii
Limited Liability Company, whose business and mailing address is 64-5245 Hauhoa
Place #B, Kamuela, Hawaii 96743, as Assignee.

LEGAL REFERENCE:

Section 171-36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Hualua Government Tract, Section D situated at Hualua,
North Kohala, Hawaii, identified by Tax Map Key: 3rd/5-5-07:05, as shown on the
attached map labeled Exhibit A.

AREA:

40.57 acres, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

Aquaculture purposes.

TERM OF LEASE:

30 years, commencing on 10/01/2005 and expiring on 09/30/2035. The first rental reopening is scheduled for 10/01/2015.

ANNUAL RENTAL:

\$7,400.00.

CONSIDERATION:

\$10,500.00.

RECOMMENDED PREMIUM:

\$5,250.00. (Refer to Exhibit B attached.)

DCCA VERIFICATION:

ASSIGNOR:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Good standing confirmed:	YES <u>X</u>	NO <u> </u>

ASSIGNEE:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Good standing confirmed:	YES <u>X</u>	NO <u> </u>

REMARKS:

At its meeting of January 25, 2002, under agenda item D-16, the Board approved the direct lease to Hawi Agricultural and Energy Corporation and Tropical Ponds Hawaii, LLC for the purpose of establishing an aquaculture operation.

Further, at its meeting of February 14, 2003 under agenda item D-3, the Board amended its prior action of January 25, 2002 (item D-16) by amending the name on the lease by removing Hawi Agricultural and Energy Corporation and naming Tropical Ponds Hawaii, LLC as the sole Lessee.

The Lessee/Assignor currently has an aquaculture operation in the Puna district and has established accounts to market their product on the mainland U.S. The Assignee will be supplying the Assignor with finished product to satisfy the increasing demand for freshwater tropical fish.

Due to the increase in fuel costs, the Lessee has found it difficult to commute between his existing fishpond operation in lower Puna District and this new one in North Kohala. A new start-up operation such as this venture requires full-time participation and the current Lessee feels he cannot devote the necessary time to make the operation successful. The Assignees live in the Kohala district and will be able to devote all their time to the development of the business. (Attached Exhibit C.)

The Assignee has been working with the Assignor in the development and implementation of the aquaculture operation for the past two years and has gained much knowledge from this association. The business is relatively new to Hawaii and there are a small number of operations producing this type of fish for commercial purposes. Big Island Farmers Market, LLC intend to market their product through accounts established by the Assignor, Tropical Ponds Hawaii, LLC.

Staff appraiser has determined that a premium in the amount of \$5,250.00 be assessed based on the assignment of lease evaluation policy. The premium was calculated at 50% of the consideration amount of \$10,500.00 as there are no improvements to the property and the lease is being assigned within the first five (5) years.

The Lessee is compliant with all lease terms and conditions including rent, insurance and performance bond. A conservation plan is pending with the Mauna Kea Soil and Water Conservation District.

The Assignee has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

As this is a new lease there are no outstanding rental reopening issues. The first rental reopening will be on 10/01/2015.

RECOMMENDATION:

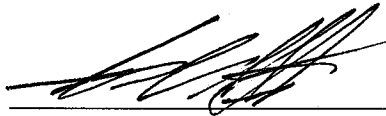
That the Board consent to the assignment of General Lease No. S-5670 from Tropical Ponds Hawaii, LLC, as Assignor, to Big Island Farmers Market, LLC, as Assignee, subject to the following:

1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
2. Collect \$5,250.00 as premium for the consideration according to the Assignment of Lease Evaluation Policy;

March 10, 2006

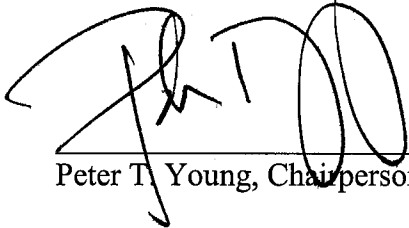
2. Review and approval by the Department of the Attorney General; and
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Gordon C. Heit
Land Agent

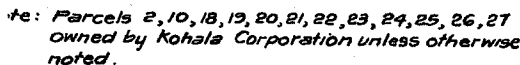
APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

State of Hawaii.
0.274 Ac.

State of Hawaii.
0.274 Ac.

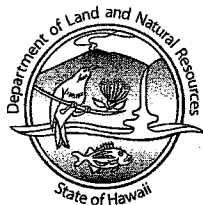


THIRD DIVISION
ZONE SEC. PLAT
5 5 07
CONTAINING 16 PARCELS
SCALE: 1 in. = 400 ft.

**ADVANCE SHEET
SUBJECT TO CHANGE**

EXHIBIT B

LINDA LINGLE
GOVERNOR OF HAWAII



2006 FEB 16 A 10:41

RECEIVED
LAND DIVISION
HILO, HAWAII

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

February 9, 2006

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

MEMORANDUM

TO: Peter T. Young, Chairperson

THROUGH: *for* Russell Y. Tsuji, Land Division Administrator *Charles E. Udo*

FROM: Cyrus C. Chen, Real Estate Appraisal Manager *Cyrus Chen*

SUBJECT: In-House Valuation Recommendation – Assignment Premium Calculation

GL No.: S-5670
Lessee/Assignor: Tropical Ponds Hawaii, LLC
Assignee: Big Island Farmers Market, LLC
Location: Hualua Government Tract, Section D, Hualua, North Kohala, Hawaii
Lease Area: 40.57 acres
Tax Map Key: (3) 5-5-07: 05

We have been requested to provide an in-house evaluation of the assignment premium due to the State for an assignment of GL S-5670. The consideration to be paid by assignee for the assignment is \$10,500. Upon review of the subject lease by Staff, it is determined the lease is subject to the Assignment of Lease Evaluation Policy approved by the Land Board, as agenda item F-10, on December 15, 1989. The policy stipulates the State "may condition its consent to the assignment of lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of the improvements and trade fixtures being transferred to the assignee."

The Assignment of Lease Evaluation Policy was amended to establish criteria for a waiver of the policy, which was approved by the Land Board on June 13, 2003, as agenda item D-28. The waiver policy establishes three criteria that the lessee is required to meet in order for the Land Board to waive the Assignment of Lease Evaluation Policy. The first of the three criteria is the lessee is required by the lease to make substantial capital improvements to the property. The subject property does not meet the criteria, and therefore a waiver of the Assignment of Lease Evaluation Policy is not warranted.

According to the Assignment of Lease Evaluation Policy, the formula for calculating the premium due to the State involves a calculation of the depreciated value of improvements and trade fixtures. Since the property is currently unimproved, this value is \$0. Since the lease is

being assigned within the first five years of the lease commencement, the premium is 50% of the consideration amount.

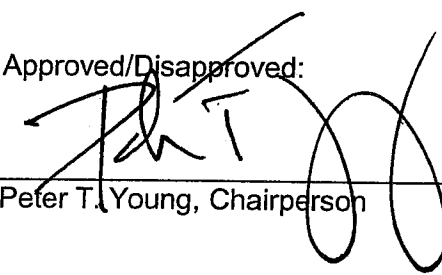
Net consideration		\$10,500
Improvement cost	\$0	
Trade fixture cost	<u>\$0</u>	
Total improvement and trade fixture cost	\$0	
Less depreciation	<u>(\$0)</u>	
Depreciated value of improvements & fixtures	\$0	
Less adjusted improvement cost (inc. trade fixtures)		<u>(\$0)</u>
Excess		\$10,500
Percentage		<u>50%</u>
Premium		\$5,250

Based on these calculations, the premium due the State is \$5,250.

Special Conditions and Limiting Assumptions

- 1) The subject property was not inspected by the staff appraiser.
- 2) This memo does not comply with USPAP and is to be used for determining the assignment premium due the State only.

Approved/Disapproved:



Peter T. Young, Chairperson

FEB 13 2006

Date

cc: District Branch Files
Central Files

TROPICAL PONDS HAWAII**BOB KERN****P.O. BOX 1750****KEAAU, HI 96749****808-982-9052**kern@ilhawaii.net

1/8/2006

**TO: STATE OF HAWAII
DEPARTMENT OF LAND AND NATUAL RESOURCES
LAND DIVISION**

RECEIVED
LAND DIVISION
HILO, HAWAII

2006 JAN 23 / P 3:21

REF: 01HD-138

Dear Sirs,

This letter is to request the assignment of the above lease to the Kim's.

The reasons for the lease transfer are

1. Economic hardship; due to the high cost of gas the commute from Hilo to Hawi has become very expensive.
2. Operating two sites is a logistical nightmare due to the distances involved.
3. The Kim's are working with me and are willing to start an aquaculture operation in Kohala, on the lease property.
4. The Kim's have experience in running their own business and are successful business people.
5. One of the benefits of having two fresh water ornamental aquaculture operations on the big island will be our ability to back each other up in meeting the market demands, we are not able to meet the demand for fish, and the demand is growing faster than we can develop.
6. Having an alternative airport to ship from will this new industry a big boost in becoming a reliable shipper that our buyers can depend on. We have had a couple of disasters where our shipments were not delivered due to airline problems. The ability to split the shipments between two farms will assure our buyer's that they will not be left without any fish.
7. In discussion with our main buyer, we will be able to raise prices as we gain market share, right now we are the baby Orca, swimming with the sharks.

Our hope is to have this become a state wide industry and that is the reason for the lease at the Hawi site.

Thanks for your assistance in this matter.

Sincerely,

Robert C KernDated 1-23-06